



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R05-OAR-2012-0312; FRL-9679-6]**

**Direct Final Negative Declaration and Withdrawal of Large  
Municipal Waste Combustors State Plan for Designated Facilities  
and Pollutants: Illinois**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve Illinois' negative declaration and request for EPA withdrawal of its 111(d)/129 State Plan to control air pollutants from "Large Municipal Waste Combustors" (LMWC).

**DATES:** This direct final rule will be effective [insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days from date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0312, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: nash.carlton@epa.gov.

3. Fax: (312) 692-2543.

4. Mail: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0312. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through

www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental

Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, [sieffert.margaret@epa.gov](mailto:sieffert.margaret@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

**I. Background**

Sections 111(d) and 129 of the Clean Air Act require submittal of State plans to control certain pollutants (designated pollutants) at existing solid waste combustion facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type and EPA has established emission

guidelines for such existing sources. Standards of performance for new LMWC units and emission guidelines for all existing LMWC units constructed on or before September 20, 1994, were originally established by EPA on December 15, 1995 (60 FR 65415).

EPA approved Illinois' LMWC State Plan to implement EPA's emission guidelines for existing LMWCs on December 29, 1997 at 62 FR 67570 and codified at 40 CFR 62.3350. The only LMWC operating in the State was Robbins Resource Recovery Center (RRRC). On May 10, 2006, EPA promulgated revised LMWC emission guidelines under 40 CFR part 60 subpart Cb, that triggered the need for states to submit revised State Plans to implement the revised emission guidelines for existing sources in the state. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within a state, the state may submit a letter of certification to that effect, or a negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements to submit a State Plan for designated pollutants at designated facilities. On February 1, 2012, the Illinois Environmental Protection Agency (IEPA) submitted a negative declaration letter to EPA certifying that the only designated facility in the State Plan, RRRC, ceased operation and is completely shut down, and

requested that EPA withdraw the Illinois' State Plan implementing the emission guidelines for LMWCs.

## **II. Final Action**

IEPA has determined that there are now no existing facilities subject to subpart Cb requirements in the State. EPA accepts the State's negative declaration. EPA is approving the State of Illinois' negative declaration and request for withdrawal of its State Plan for LMWCs. Accordingly, EPA is amending part 62 to reflect approval of the IEPA February 1, 2012, negative declaration and request for EPA withdrawal of the LMWC State Plan. However, if an affected Illinois LMWC unit is discovered in the future, all the requirements of the Federal plan (including revisions or amendments), part 62, subpart FFF, will be applicable to the affected unit.

EPA is publishing this approval notice without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the State's negative declaration and request for withdrawal of Illinois' State Plan for LMWC units in the event adverse comments are filed. This rule will be effective [insert date 60 days from the date of publication in the Federal

Register] without further notice unless we receive relevant adverse written comments by [insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective [insert date 60 days from the date of publication in the Federal Register].

## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly,

the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities



established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing Section 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to use VCS in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report,

which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Illinois' Section 111(d)/129 negative declaration and request for EPA withdrawal of the LMWC plan approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control,  
Administrative practice and procedure, Large municipal waste  
combustors, Intergovernmental relations, Reporting and record-  
keeping requirements.

Dated: May 16, 2012.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

**PART 62-- [AMENDED]**

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart P - Illinois**

2. Section 62.3350 is amended by revising the section heading, designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

**§ 62.3350 Identification of plan - negative declaration.**

\* \* \* \* \*

(b) On February 1, 2012, the Illinois Environmental Protection Agency submitted a negative declaration that there are no large municipal waste combustors in the State of Illinois subject to part 60, subpart Cb emission guidelines and requested withdrawal of its State Plan for LMWC units approved under paragraph (a) of this section.

3. A new § 62.3351 is added to read as follows:

**§ 62.3351 Effective date.**

The Federal effective date of the negative declaration and withdrawal of Illinois' State Plan for LMWC units is [insert date 60 days from date of publication in the Federal Register]

[FR Doc. 2012-13205 Filed 05/30/2012 at 8:45 am; Publication  
Date: 05/31/2012]